Contracting Procedures and Forms: Above the SAT

Learning Objectives

Terminal Objectives

Produce the appropriate above and below simplified acquisition procedures threshold (SAT) contract actions based on a given scenario

Enabling Objectives

Demonstrate proper use of declared and non-declared contingency contracting thresholds

Distinguish between contract types

Complete contractual instruments based on a given contingency contracting requirement

Prepare requirements and actions in a

Learning Objectives

Terminal Objectives

Discuss actions a Contracting Officer should take when completing a contract claim *, protest, and/or dispute

Enabling Objectives

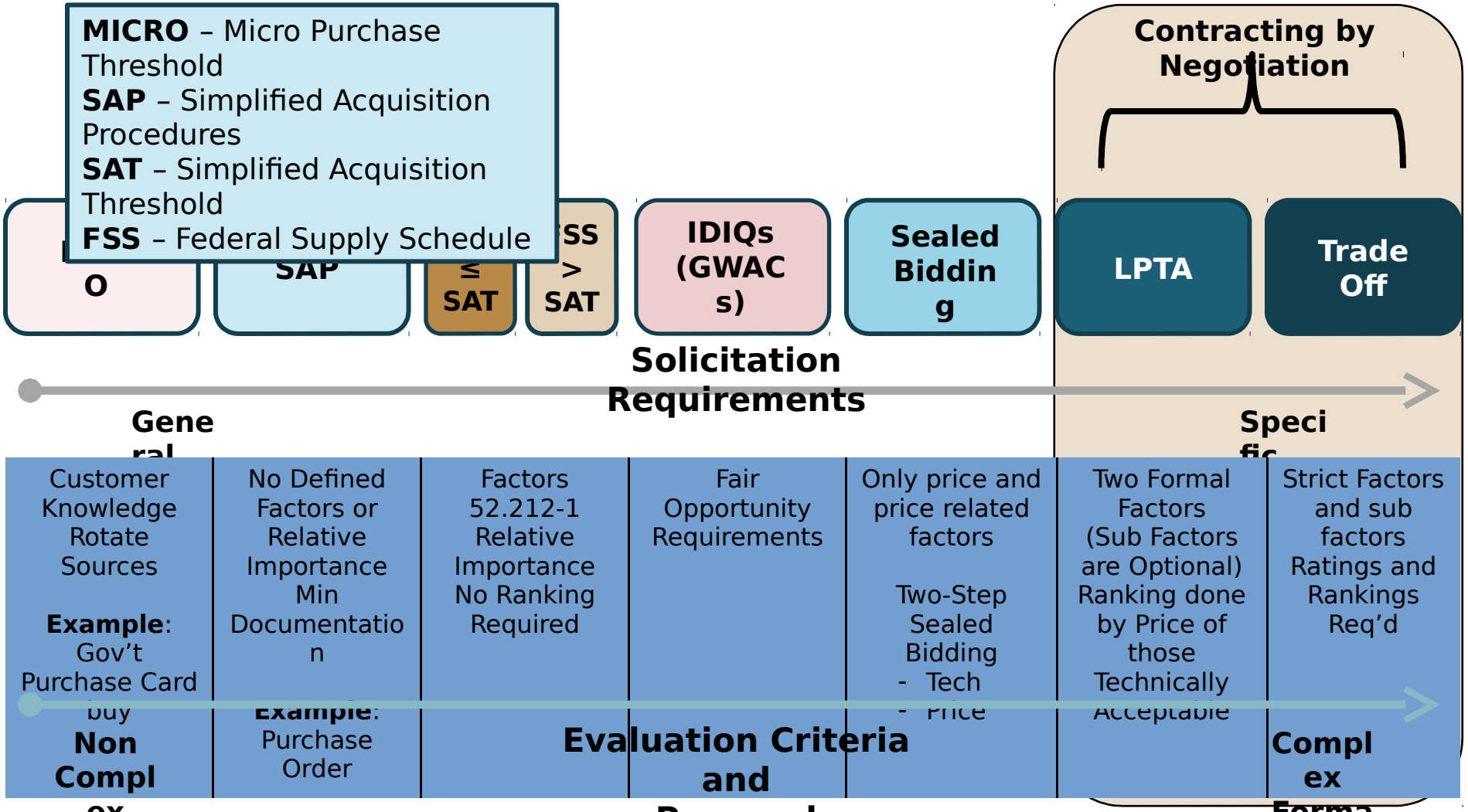
Determine actions to take when notified of a potential claim or protest

Identify actions to reduce the probability of claims or protests

** Claims will be addressed in a later lesson*

Selecting a Source - Spectrum

MICRO – Micro Purchase Threshold
SAP – Simplified Acquisition Procedures
SAT – Simplified Acquisition Threshold
FSS – Federal Supply Schedule



Contract Types

Fixed Price

- **Firm Fixed Price**
- Fixed Price w/ Economic Price Adjustments
- **Fixed Price Incentive Firm**
- Fixed Price w/ Prospective Price Redetermination
- Fixed Ceiling Price
- Firm Fixed Price Level of Effort

Cost Reimbursement

- Cost
- Cost Sharing
- Cost Plus Incentive Fee
- Cost Plus Award Fee
- Cost Plus Fixed Fee

Time & Material (T&M)

- Labor Hour
- Letter

- Indefinite Delivery/Indefinite Quantity
  - Definite Quan
  - Requirements

Could be CR or FP

Selecting Contract Type is a function of "Risk" Allocation

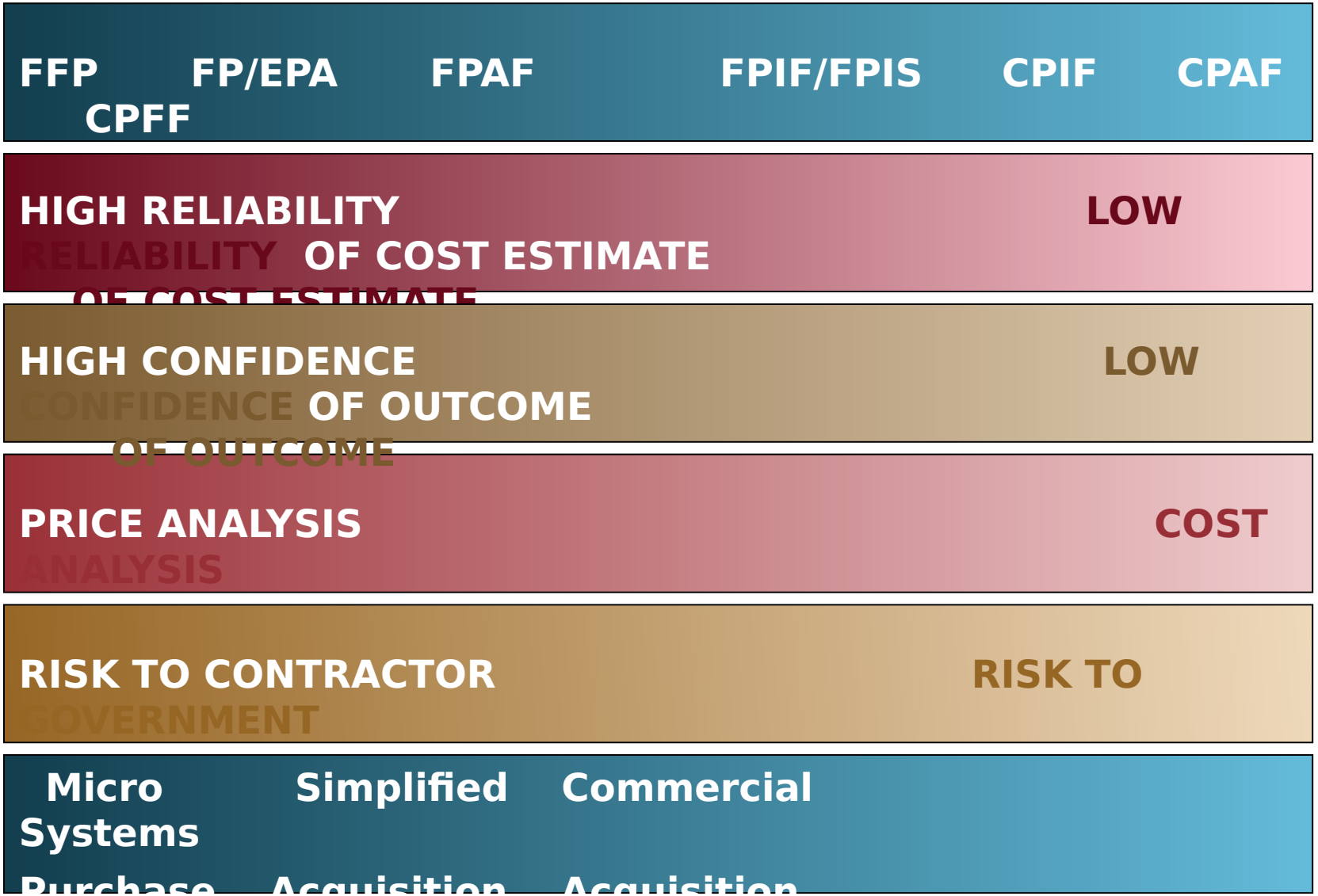
Characteristics and Policy

	Cost Reimbursable	Fixed Price
Promise Risk	Best Effort	Shall Deliver
Contractor Cost Risk	Low	High
Government Cost Risk	High	Low
Cash Flow Risk	As incurred	Upon Delivery
Performance Payment	Only if incentives	Milestone Met
	ximum	Minimum
	Limits	No Limits

Objective: negotiate contract type and price (or estimated cost and fee) resulting in reasonable contractor risk and provide greatest incentive for efficient and economical performance

- Seek appropriate risk allocation
- Promote Government's interest and motivate contractor to achieve objectives
- No Cost-Plus-Percentage-of-Cost contracts
- Approval for Fixed Price Development Contracts

Contract Types - Spectrum



Formal Source Selection Techniques

- **Best Value Continuum**
  - **Lowest Price Technically Acceptable**
    - Best Values is expected to result from selection of the technically acceptable proposal with the lowest evaluated price
  - **Tradeoff Process**
    - Appropriate when it is in Government's best interest to consider award to other than lowest priced or highest technically rated offeror
    - Trades better quality, technical ability or performance for price

All source selections shall evaluate ***cost or price***, and the ***quality*** of the product or services

Source Selection Procedures

- **Objective:** Select the proposal that represents the best value to the Government (*FAR 15.302*)
- **Appointment of Source Selection Authority (SSA) > $100M**
- **Source Selection Plan (SSP)**
  - Shall be prepared for each source selection and approved by the SSA for all contract actions over $1M that utilize FAR 15.3 source selection procedures
  - A SSP not required for commercial actions <$13M using SAP
- **Best Value** can be obtained by using any one or a combination of source selection approaches.
  - The evaluation factors and their relative importance must be clearly stated in the solicitation and otherwise comply with the requirements of FAR 15.101-1

DoD SS Procedures Guide

Table 3. Technical Risk Ratings	
Rating	Description
Low	Has little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties.
Moderate	Can potentially cause disruption of schedule, increased cost or degradation of performance. Special contractor emphasis and close Government monitoring will likely be able to overcome difficulties.
High	Is likely to cause significant disruption of schedule, increased cost or degradation of performance. Is unlikely to overcome any difficulties, even with special contractor emphasis and close Government monitoring.

Table 1. Combined Technical/Risk Ratings		
Color	Rating	Description
Blue	Outstanding	Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.
Purple	Good	Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.
Green	Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.
Yellow	Marginal	Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.
Red	Unacceptable	Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.

- **Standardized methodology and uniform guidance to conduct Source Selections**
- **Directs use of standardized rating criteria**
- **Required use of descriptions for "Technical" and "Past Performance" evaluation factors**

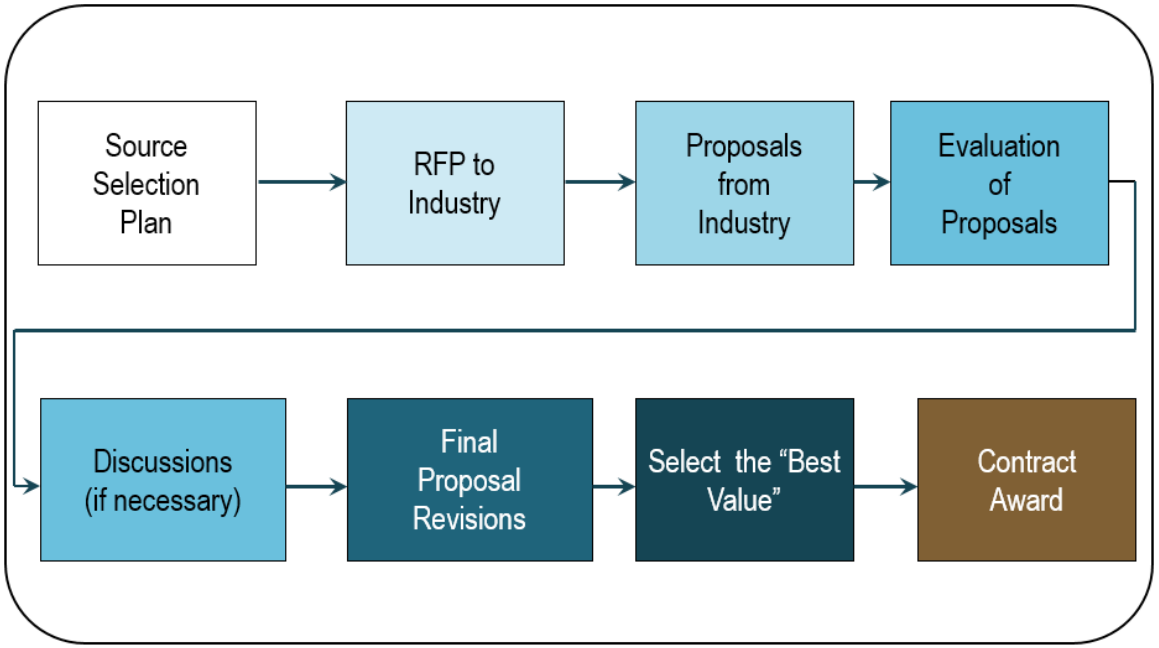
Table 4. Past Performance Relevancy Ratings	
Rating	Definition
Very Relevant	Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

Where to find the **SS Procedures Guide**

acc.dau.mil/Contracting

Effective 1 July 2011

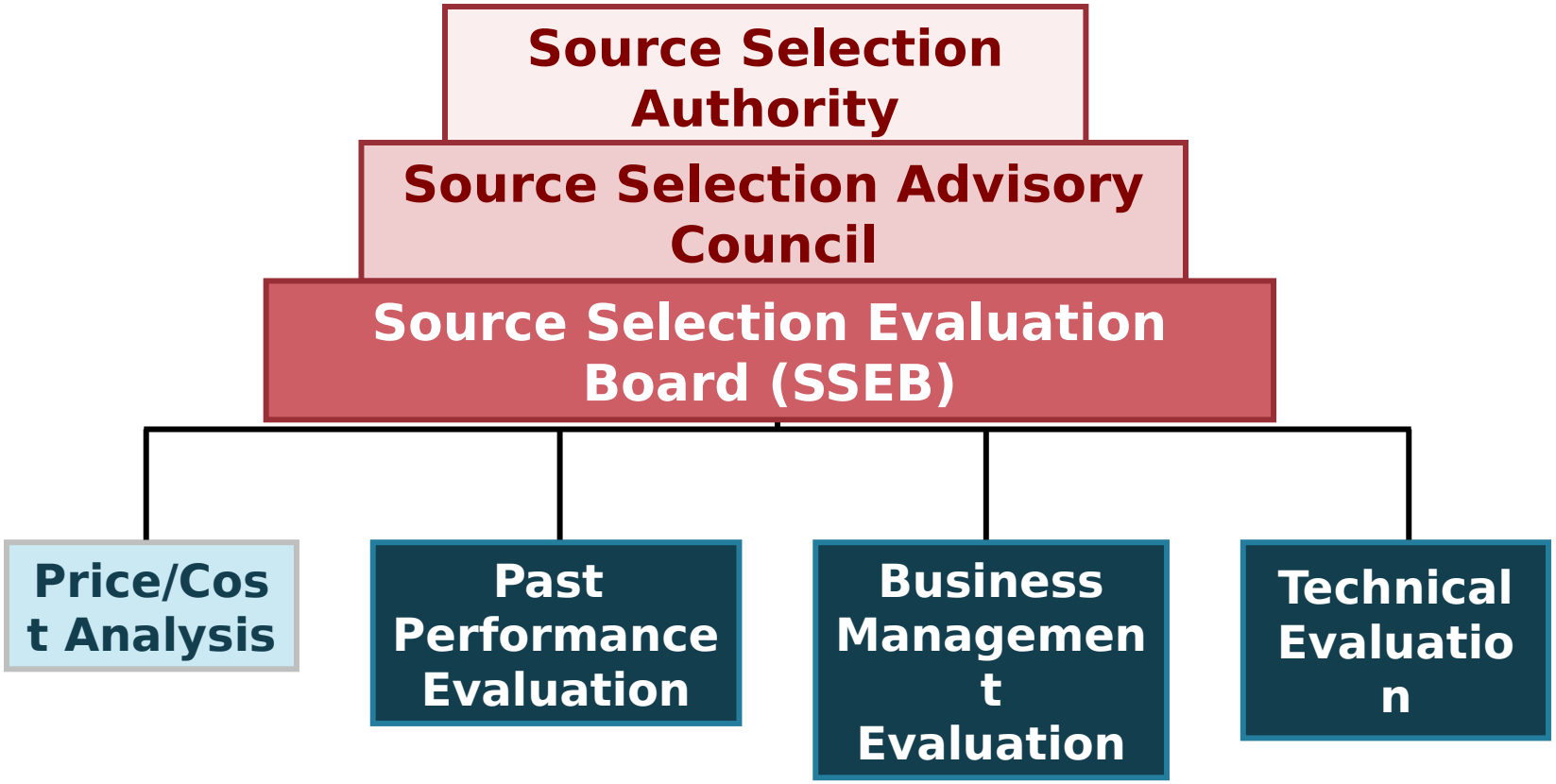
Source Selection Process



SSA Responsibilities (Formal Source Selection)

- Establish/Appoint Source Selection Evaluation Board (SSEB)
- Approve Strategy/Acquisition Plan (AP) before solicitation release
- Approve Source Selection Plan (SSP)
- Approve RFP prior to release
- Ensure that conflicts of interest, or the appearance thereof, are avoided
- Ensure evaluation of proposals is based solely on factors/sub-factors in the RFP
- Review SSEB evaluation results
- Approve Competitive Range Determination
- Perform an integrated assessment of the evaluation results and select the source whose proposal represents the Best Value to the

Notional Source Selection Organization



Solicitation – Evaluation Factors

The SOW, PWS, Specifications, etc. are near complete after the acquisition planning and market research process

- It is time to develop the ***Evaluation Factors***
- Why should COR be co
  and selecting the cont

Two Categories of Evaluation Factors

- Evaluation factors define how (and ultimately who) the awardee will be selected
- Who is selected influences probability of successful contract performance

Factors – Proposal Evaluation

Non-price evaluation factors should be:

- Clear
- Relevant
- Ultimately, Differentiate between proposals

Avoid

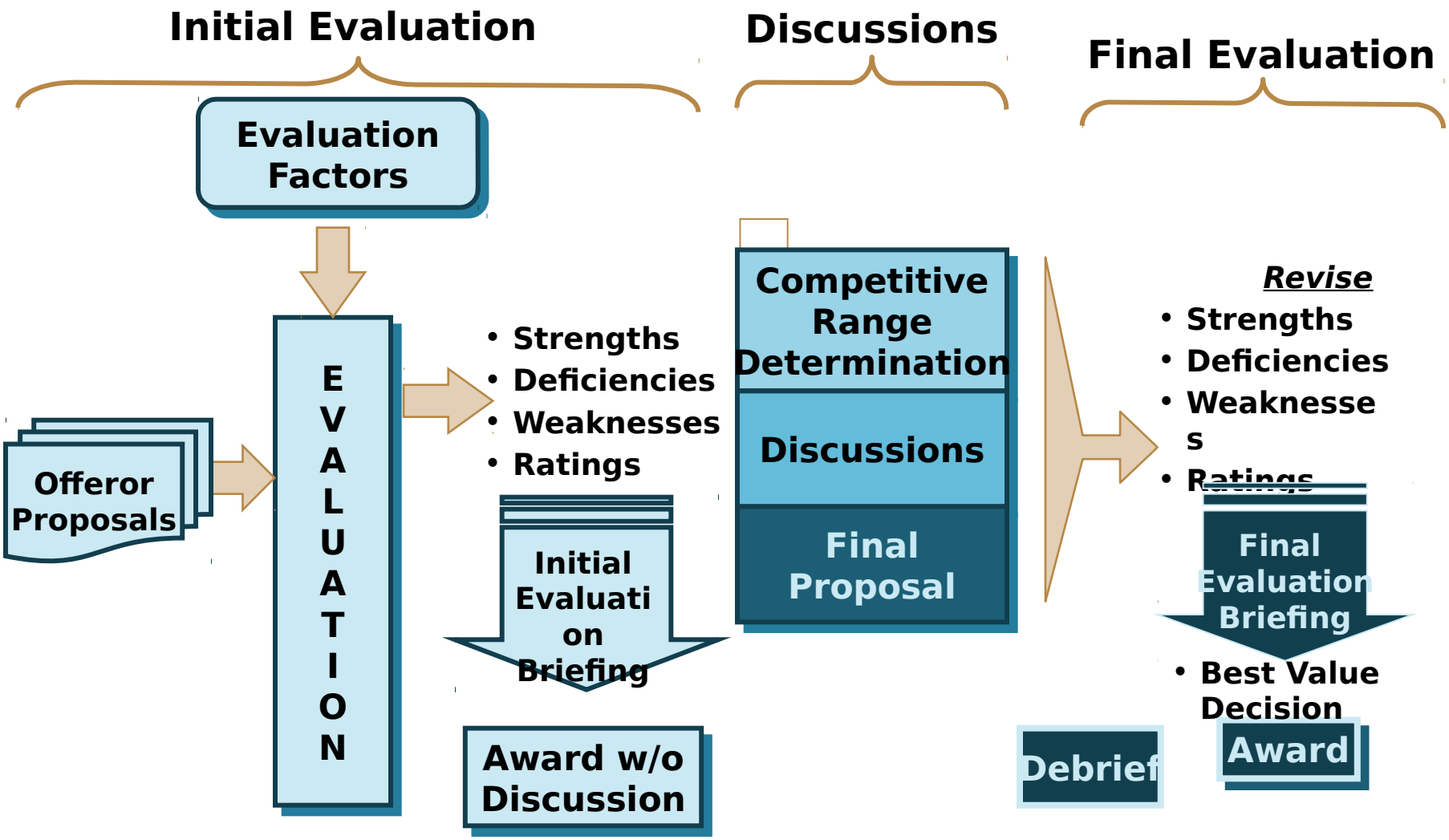
- Too many factors and/or sub factors
- Factors which unfairly limit competition

Tailor the factors to the individual procurement

Proposals **will** be evaluated **against** the evaluation factors in the solicitation

- Technical evaluation team responsible for evaluating technical proposals:
  - Assign ratings to proposals
  - Make recommendations to KO on clarifications needed and deficiencies identified
  - Reviewing revised offers
  - Assist KO during negotiations
  - Participating in unsuccessful offeror debriefings

Evaluation Process



Proposal Evaluation - Documentation

PRICE NEGOTIATONS

In many contingency environments; Fair and Reasonable Pricing may not be obtainable through competitive proposals alone.

- In awarding negotiated contracts, CCOs should always engage in aggressive negotiations based on pre-negotiation objectives FAR 15.405
- All negotiation results must be ***documented*** in a Price Negotiation Memorandum **PNM** FAR 15.406-3

REMINDER!

Ensure proposals are evaluated and results documented based *solely* on the factors and subfactors contained in the solicitation

- Proposal are ***not*** evaluated against each other for technical merit

ant if we don't
ules!

Common Contingency Flexibilities

Use of Oral Solicitations	Use of Letter Contracts
• FAR 15.203(f) for use of oral solicitations • FAR 6.302-2 for other than full and open competition due to urgency • FAR 5.202(a)(2) or (12) for waiving synopsis • Requires file documentation for oral solicitations, J&A for OTF&OC, and D&F for synopsis	• FAR 16.603 • Gets contractor on the job quickly • HCA approval required prior to award • Must contain NTE amount • Strict definitization requirements for DoD: – Before completing 40% of work – Before expending 50% of NTE – Prior to 180 days

WARNING!! The use of oral solicitations and letter contracts requires approval, typically well above the CCO. Thorough research and understanding of ALL[10-17] related FAR, DFARS, and PGI requirements

Indefinite Delivery Contracts

Task and Delivery Order Characteristics:

- Do **not** contain all UCF/Commercial parts and terms and conditions, normally just those applicable to the Order such as:
  - CLINs
  - SOW/PWS
  - Delivery Instructions
  - Unique requirements
- Typically awarded using the DD Form 1155 or SF1449

Slang "IDIQ"

- Task/Delivery Order terminology also used when procuring off of FSS or GWACs

CORs designated at the "Order" level

Characteristics

Funding	Requirements Contract	Ordering
• Funded Minimum up Front • Funded at the Individual Order Level • Multiple Awards Encouraged – Compete among holders "Fair Opportunity" – Rotate • No Guarantee after Meeting Minimum	• Type of indefinite delivery contract • No money obligated up front • Only **one** source per commodity/service – "Winner Take All" • Individual delivery orders funded • Contractor must perform	• Similar to BPA Call • More complex products/services • Written against indefinite delivery contracts • Executed on SF1449 / DD1155 • Delivery orders (supplies) • Task orders (services)

Overview – Forms and Documentation

Common Above the SAT Forms

- **SF 33, Solicitation, Offer and Award**
- **SF 1449, Solicitation/Contract/Order for Commercial Items**
- **DD 1155, Order for Supplies or Services**
- **SF 18, Request for Quotation**
- **SF 26, Award/Contract**
- **SF 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair)**

Reminder

- Justifications and Approvals (J&A)
  - Other than full and open competition and out of scope modifications
- Determinations and Findings (D&F)
  - Oral Solicitations, advance payments, Letter Contracts, waiving synopsis, Ratifications, use of and exercise of Options

BID PROTESTS

What is a Protest?

Protest means a written objection by an interested party to any of the following:

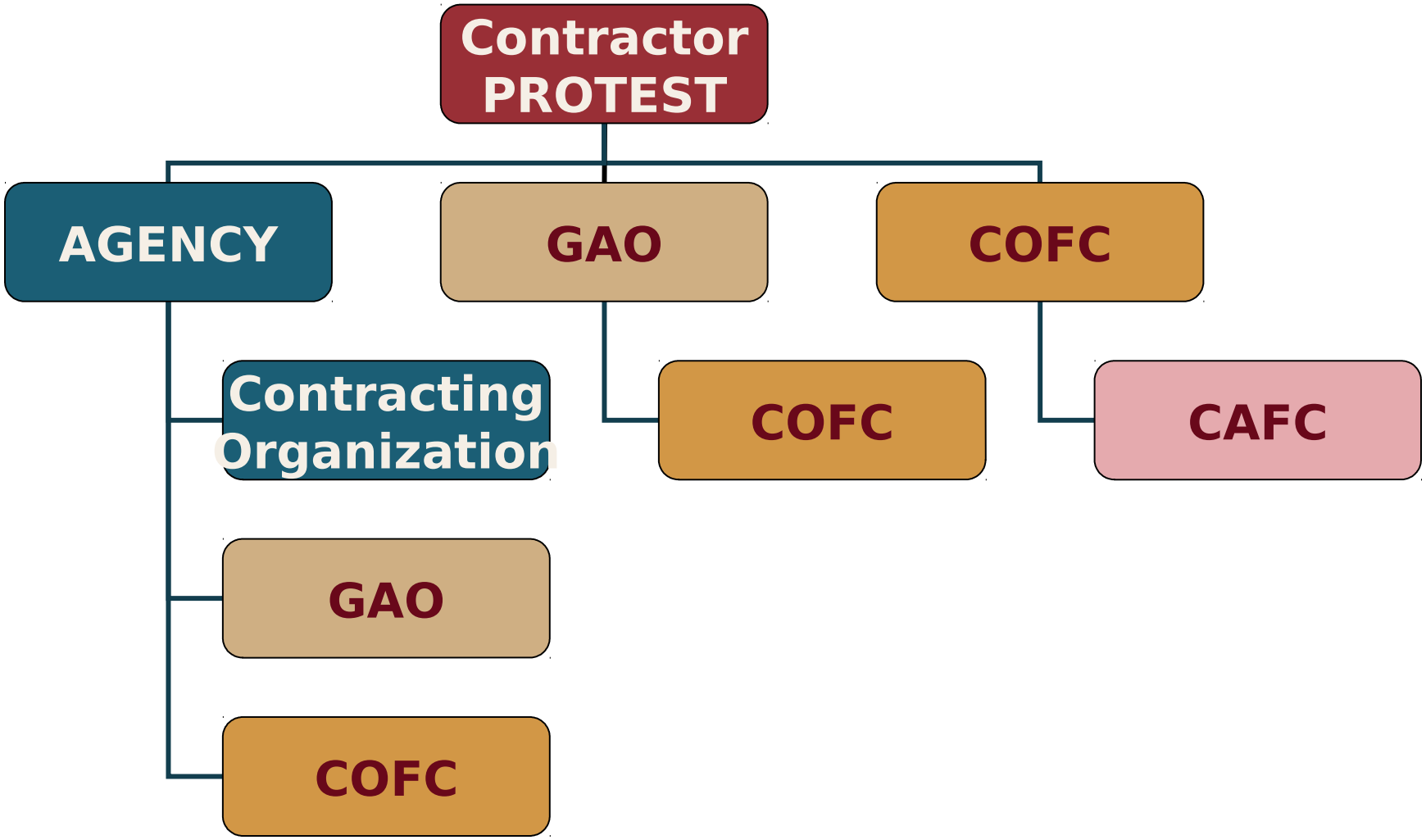
- A solicitation or other request by an agency for offers
- The cancellation of a solicitation
- An award or proposed award of a contract
- A termination or cancellation of a contract award

"Interested party"… means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

- Good lines of communication between the CCO and supporting legal office is critical to successfully defend against a bid protest or appeal
- As part of deployment preparations, the CCO should identify and know how to communicate/work with supporting legal counsel

Primary Impact: delay award and performance of a mission critical contract

Protest Forums



Protests to the Agency

- **Focus is on the Contracting Officer**
- **Objectives of the Process**
  - Expeditious Resolution
  - Builds Confidence in Agency (transparency)
  - Reduce “Formal” Protests
- **Designing Agency Procedures**
  - Inexpensive / Informal
  - Review at a Level Above the

- **Protests shall include per FAR 33.103(d)(2):**
  - Name, address, fax, and telephone numbers of the protester
  - Solicitation or contract number
  - Detailed statement of legal and factual grounds for the protest
  - Copies of relevant documents
  - Request for a ruling by agency
  - Statement as to the form of relief requested
  - All information establishing protester as an interested party and the timeliness of the protest

Failure to substantially comply with the above may be grounds for dismissal of the protest

Protests to GAO

General Procedures

- Protester provides copy to contracting office within 1 day after filing with GAO
- Agency immediately notifies awardee or potential awardees that protest filed
- KO immediately begins compiling information for report to the GAO

Agency provides

- Copy of documents described in 33.104(a)(3)(ii)
- KO's signed statement of relevant facts
- List of parties receiving the documents

- **Agency must provide a copy of the GAO report to the protester**
- **GAO may issue protective orders**
- **Protester/other parties submit comments on agency's report to GAO**

Receipt of a Protest: Action

Before Award	After Award
After notified of protest from GAO, contract may **not** be awarded…unless HCA determines • Urgent and compelling circumstances significantly affect the U.S. and can't wait for GAO decision, and • Award is likely to occur within 30 days of written finding • Award shall not be authorized unless HCA determination above provided to GAO • If award will be withheld, agency should ask potential awardees to extend their	When agency receives notice of timely protest from GAO, KO will suspend performance or terminate, unless • HCA states in writing that – Contract performance will be in the best interests of the United States; or – Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision * Contract performance shall not be authorized until the agency has notified the GAO of the finding

Practical Exercise, Part II

NAME: Contractual Instruments Above the SAT, or when not using SAP

DIRECTIONS: Each team must turn in completed forms and PIIN Logs

RUBRIC: See exercises for point values